UNAPPROVED AND SUBJECT TO CHANGE
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

February 10, 2004

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:58 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Pam Karlan, Sheridan Downey and Phil Blair were present. Commissioner Knox arrived later in the meeting.

Item #1. Public Comment.

There was no public comment regarding items not on the agenda.

Consent Calendar

Commissioner Blair moved that the following items on the consent calendar be approved:

Item #2. Approval of the Minutes of the December 17, 2003, Commission Meeting.

Item #3. Approval of the Minutes of the January 14, 2004, Commission Meeting.

Item #4. *In the Matter of Kidspart*, FPPC No. 01/241. (1 count.)

Item #5. *In the Matter of James W. Jacobs*, FPPC No. 03/493. (1 count.)

Item #6. *In the Matter of Martin Enterprises*, FPPC No. 03/279. (1 count.)

Item #7. *In the Matter of Douglas Hoopes*, FPPC No. 02/690. (1 count.)

Item #8. Failure to Timely File Late Contribution Reports – Proactive Program.

a. ***In the Matter of Liquidity Financial Group*, FPPC No. 2003-822.** (1 count.)

b. ***In the Matter of Laurie F. Michaels*, FPPC No. 2003-824.** (1 count.)

c. ***In the Matter of Gaye E. Morgenthaler*, FPPC No. 2003-825.** (2 counts.)

d. ***In the Matter of PAC to the Future*, FPPC No. 2003-827.** (1 count.)

e. ***In the Matter of Jeffery A. Rich*, FPPC No. 2003-828.** (1 count.)

f. ***In the Matter of Richard Sandler*, FPPC No. 2003-829.** (1 count.)

g. ***In the Matter of Washington Mutual Bank, FA*, FPPC No. 2003-831.** (3 counts.)

h. ***In the Matter of Z Valet*, FPPC No. 2003-833**. (1 count.)

i. ***In the Matter of Home Closeb, Inc.*, FPPC No. 2003-834.** (1 count.)

j. ***In the Matter of Nicholas J. Bouras*, FPPC No. 2003-836.** (1 count.)

k. ***In the Matter of Brown & Caldwell*, FPPC No. 2003-837.** (1 count.)

l. ***In the Matter of ACS State & Local Solutions*, FPPC No. 2003-838.** (5 counts.)

m. ***In the Matter of Elegance Corporation*, FPPC No. 2003-841.** (1 count.)

Commissioner Karlan seconded the motion.

Commissioners Blair, Downey, Karlan and Chairman Randolph voted "aye". The motion carried by a vote of 4-0.

Item #9. Pre-notice Discussion of Amendments to Lobbying Disclosure Regulation 18616 -- Reporting by Lobbyist Employers and Persons Spending $5,000 or More to Influence Legislative or Administrative Action.

Technical Assistance Division Chief Carla Wardlow explained that staff was presenting an amendment to the lobbying disclosure regulation 18616, noting that the amendment dealt with lobbying payments made in connection with ratemaking and other proceedings before the California Public Utilities Commission (PUC). She noted that staff identified a problem that had resulted from the passage of AB 1325 in 2001.

Ms. Wardlow stated that the requirement to disclose payments for communications soliciting or urging other members of the public to contact elected or administrative officials on an issue (grass roots lobbying) was a very important provision of the Act. She noted, however, that AB 1325 inadvertently repealed a requirement to disclose those payments when made in connection with PUC proceedings.

Ms. Wardlow explained that the $5,000 filer (those entities that do not employ a lobbyist but trigger reporting requirements when making payments of $5,000 or more in a calendar quarter to lobby the state Legislature or state administrative agencies) become filers under § 86115, which was not amended by AB 1325. She noted that § 86115

specifically includes grass roots lobbying as a type of payment that qualifies one as a $5,000 filer. However, § 86116, amended by AB 1325, no longer requires reporting of grassroots lobbying in connection with PUC proceedings.

Ms. Wardlow stated that the purpose of AB 1325 was to codify a reduced reporting scheme that was contained in Commission regulations. However, she explained that those regulations linked reduced reporting to the definition of "administrative testimony" in regulation 18239, and was limited to public proceedings in which the filer's participation was mandatory. She believed that the reduced reporting under AB 1325 encompassed a much broader range of PUC lobbying activities, eliminating the reporting of an important piece of information that is not otherwise on the public record. This results in a conflict between the unamended section 86115 (which still qualifies one as a $5,000 filer), and amended section 86116 (which currently says the filer has nothing to report).

Ms. Wardlow presented staff's proposed amendment to regulation 18616 to resolve the issue.

Staff Counsel Galena West stated that the Commission had the authority to resolve the conflict between the two statutes. She noted that they should be harmonized since they conflict with each other, in order to give each statute meaning. She explained that, since the literal meaning of § 86116 reads the filing requirement of § 86115 out of existence, a different interpretation must be applied.

Ms. West suggested that a lump sum payment reporting requirement for grass roots lobbying would be the least intrusive resolution to coordinate the two statutes, and noted that it could be accomplished by applying § 86116(i), requiring that period reports contain "any other information required by the Commission consistent with the purposes and provisions of this chapter." This would harmonize the two sections and would keep the reporting of grassroots lobbying in connection with PUC reporting in the Act.

Ms. West stated that AB 1325 was not intended to eliminate grassroots lobbying, but that it appeared to be an inadvertent result that could be amended through the proposed regulatory language.

Chairman Randolph questioned whether the more specific should take precedence over the more general.

Ms. West responded that it would not take precedence over the other statutory arguments prohibiting an amendment through implication, or without going through the procedures of § 81012, noting that there were other pressing considerations that should be considered.

General Counsel Luisa Menchaca stated that the regulatory proposal avoided addressing the fundamental issue of whether the change made by AB 1325 furthered the purposes of the Act. Since it did not further the purposes of the Act, it was an issue that might have to be addressed.

In response to a question, Ms. Wardlow stated that, if an entity paid an employee $2,000 to testify at a hearing, and paid $20,000 for a billboard urging people to urge their legislator to vote in a particular manner, then the $20,000 would not be reported. The $2,000 would be counted towards filing requirements, but would not be enough to qualify the entity as a filer and would not be reported.

In response to a question, Ms. Wardlow stated that if the same entity paid three different employees $3,000, they would have to file and disclose the $9,000, but not the $20,000.

Commissioner Karlan agreed that there was no reason to assume that AB 1325 intended to eliminate the requirement that the $20,000 be reported. However, she questioned whether it was absolutely clear that there was enough of a conflict to justify a regulation that reads a requirement back into the statute.

Ms. West stated that there was justification, because the entity would have no filing requirements under the first scenario even though they would qualify as a $5,000 filer, and the public would not know about the payments.

Commissioner Karlan observed that, if the statute was rendered absurd, something would have to be read into it, but she did not believe the statute was rendered absurd by AB 1325. She questioned whether it was appropriate to create a regulation that would say that the statute does not mean what it says on its face and is a bad idea.

Commissioner Tom Knox joined the meeting at 10:10 a.m.

Ms. West responded that, since AB 1325 eliminated a requirement under the statute without actually amending that statute, and since amendments to the Act must be in furtherance of the Act, the regulation was important enough to be justified.

Scott Hallabrin, from the Assembly Ethics Committee, stated that he was the drafter of AB 1325, and that the intent was to rectify the PUC lobbying issues, and to reclaim more reporting for PUC lobbying. He explained that the original draft of the legislation would have given PUC lobbyists the same reporting requirements as lobbyists for other state agencies. However, after intense pressure from companies that lobby the PUC, a compromise was reached. He suggested that the Commission fall back on the provision of the Act that requires a liberal interpretation to achieve its purposes.

Chairman Randolph agreed that it was not the intention of AB 1325 to eliminate that type of reporting, but noted that the question was over whether the Legislature or the

Commission was responsible for resolving the issue. She was persuaded that the Commission had the authority to resolve the issue.

In response to a question, Ms. West stated that the regulation would be brought back to the Commission for adoption in April.

Item #10. Clarifying Amendments to Regulation 18703.1 et seq.

Assistant General Counsel John Wallace stated that the 1998 and 2000 Regulation Improvement Projects made significant revisions to the sequence and substance of the conflict of interest regulations of the Act, and that one of most noteworthy changes was the creation of the eight-step process. He noted that the Commission has, periodically, reevaluated the process. The item was intended to clarify the third step of that process, determining when an official has an economic interest in a decision for disqualification purposes.

Mr. Wallace stated that the first set of amendments codifies what is implicit in the regulations and makes it express by including language clarifying that the regulations are not disclosure regulations, but rather disqualification regulations for the eight-step process. He explained that the proposed language of each of the regulations includes an express cross-reference to the disqualification statutes §§ 87100 and 87103.

Mr. Wallace explained that the deletion of language in 18703.1 is justified because (1) the existing language, intended to clarify that this was a disqualification regulation and not necessarily a disclosure regulation, has been interpreted ambiguously, and (2) the language dealing with the disclosure issue is no longer needed because the express statutory reference has been added to clarify that it deals with disqualification.

Mr. Wallace proposed an amendment that would take the language in regulation 18703.1 and placed it in the proper regulation by adding it to 18703.3. He stated that a parent and subsidiary rule applies to investments, business positions with a parent, or when the subsidiary receives income from a parent. He noted that the language was originally placed in a regulation that purports to deal only with investments and business positions, which was problematic. A separate regulation dealing with sources of income does not contain the parent/subsidiary language, creating the need to add the language to the income regulation. He noted that all of the proposed language conforms with the Commission position and advice.

In response to a question, Mr. Wallace agreed that the word “because” should be deleted from the second bullet point on the first page of the staff memo. The language intended to clarify that the regulations do not govern disclosure, and that other statutes and regulations do.

Commissioner Blair pointed out that page 3, amendment 2(A), deals with a controlling ownership interest. He noted that a "controlling ownership interest" is generally assumed to be 51%. He asked whether the owner of 49% of a company could be considered a controlling ownership interest when the other 51% is spread over 1,000 other people.

Mr. Wallace responded that anything over 50% would be considered controlling ownership interest with regard to parent/subsidiary rules. The fact that the ownership is spread out among many other people is probably not relevant. He explained that the existing regulation deals specifically with parent/subsidiary rules and also deal with otherwise related business entities which are not necessarily parent and subsidiary.

In response to a question, Ms. Menchaca stated that the current language in regulation 18703.1(d)(2)(C) defines "controlling owner" as "50% or greater interest as a shareholder or as a general partner."

Mr. Wallace pointed out that, in most cases, the secondary factors are analyzed on a case-by-case basis.

Commissioner Blair commented that an owner of 49.9% of an entity, with the rest of the shares owned by thousands of other people, pretty much makes the 49.9% owner a controlling entity in the business.

Mr. Wallace noted that staff had not looked at that existing language when they prepared the proposed amendments, but that staff could review letters regarding the issue to present to the Commission for informational purposes. He noted that the advice letters tended to be pretty liberal in their construction of the rules.

Commissioner Karlan stated that it made sense to refer to §§ 87100 and 87103, and asked if it would be simpler and clearer to change the language to read, "For purposes <u>of disqualification under</u> §§ 87100 and 87103…."

Ms. Menchaca and Mr. Wallace agreed that the change would be helpful.

Commissioner Blair moved the regulations be adopted with the changes suggested by Commissioner Karlan.

Commissioner Karlan pointed out that the language should be changed in regulations 18703.1 through 18703.5.

Commissioner Downey seconded the motion.

Commissioners Blair, Downey, Karlan and Knox voted "aye." The motion carried unanimously.

Item #11. Proposal to Add Government Code section 1090, et seq., into the Political Reform Act -- Status Report.

Commissioner Karlan asked whether there was any organization that promulgates regulations under 1090.

Mr. Wallace responded that 1090 is interpreted through case interpretations.

In response to a question, Mr. Wallace stated that there were Attorney General opinions under 1090, but they do not provide the immunity that a Commission advice letter would provide, and are almost considered informal. He noted that a lot of the advice is given at the trench level with the city attorneys and county counsels, and he believed that was another reason that those local officials would want § 1090 included in the Act.

Chairman Randolph pointed out that only certain people are permitted by statute to get an AG opinion, and that those people do not include city attorneys.

Item #12. BCRA memo (LW) Staff Report on the U.S. Supreme Court's recent decision on the federal Bipartisan Campaign Reform Act of 2002.

Senior Commission Counsel Larry Woodlock explained that the Supreme Court decision on the Bipartisan Campaign Reform Act of 2002 (BCRA), amended the federal counterpart of the PRA and radically amended it in a number of areas. In upholding the decision, the High Court indicated the extent to which the U.S. constitution permits governmental regulation of campaign related activities.

Mr. Woodlock stated that the staff memorandum surveys the major constitutional questions decided by the majority. He observed that the decision should not be regarded as the last word on the issues since so much was left unclear. He pointed out that the PRA has few statutes that are directly comparable to the BCRA amendments, so the real significance of the decision would be in the nature of a guide to legislative possibilities in California.

In response to a question, Mr. Woodlock stated that the PRA's aggregation rule for minors was different than the BCRA provision in that BCRA provision was an outright ban against anyone under the age if 18 from contributing. He noted that minors can make a contribution under the PRA, with the presumption that the contribution was made under the direction of the parent, and the contribution is aggregated with any contributions made by the parent. He believed that the presumption was probably rebuttable.

Commissioner Karlan noted that it would be a ban under the PRA if the parent had already contributed up to the contribution limits.

Mr. Woodlock agreed, noting that it would not be a ban in other cases, making it less severe than the federal provision. He noted that the minor could rebut the presumption in order to make the contribution.

Ms. Menchaca stated that this issue came up during the discussions of the Commission's *Pelham* opinion, and dealt with the issue as a rebuttable presumption.

Commissioner Karlan and Chairman Randolph commended the staff memo.

Item #14. Approval of 2004 Addendum to Campaign Disclosure Manuals C, D, and E.

Ms. Wardlow requested approval of the 2004 campaign manual addendum. She noted that the Commission approved the two campaign manuals for state and local candidates at its January 2004 meeting, and that those portions of the addendum had been eliminated. The addendum now addresses only those manuals that are still in the process of being updated.

Commissioner Karlan moved that the manuals be approved.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Karlan, Knox and Chairman Randolph voted "aye." The motion carried unanimously.

Item #15. Proposed Legislation for 2004.

Executive Director Mark Krausse explained that, once authors are found for the 2004 legislative proposals, some of the proposals may be consolidated according to the author's priorities.

Ms. Wardlow stated that a representative from Senator Johnson's office a couple of issues of concern with the campaign filing schedule proposal had, and Ms. Wardlow believed that there may have to be some language changes in the proposal. She explained that her goal in the proposal was to eliminate confusing cross-referencing to June primary elections and other provisions that were added in connection with the March primary election that has created a lot of confusion. Senator Johnson's representative was very supportive of eliminating the confusing deadlines that were linked to the June primary elections, but believed that § 84202.7, moving the deadline for the March election statement from October 10 to October 31, might not be a good idea because candidates file nomination documents in early October.

Chairman Randolph agreed that the deadline would be better placed before the filing deadline for nomination papers.

Ms. Wardlow stated that October 10 is fine, or that it could be moved to October 15 to give people a little more time to comply.

In response to a question, Ms. Wardlow stated that the nomination period for the upcoming March election opened around October 27.

Chairman Randolph observed that the nomination period would generally be the third week of October.

Ms. Wardlow agreed that October 31 would be very late for people to know who is raising or spending money for the March primary.

Chairman Randolph encouraged staff to continue to seek authors for the legislation.

Mr. Krausse explained that the PERS/STRS proposal was removed from AB 419 in the summer of 2003. He noted that STRS, the sponsors of AB 419, agreed to defer to the FPPC this year to work on language. He stated that the proposal tries to address their concerns in AB 419, as well as correct some problems with the way PERS board candidates are regulated under the PRA. The changes will basically keep PERS candidates under the same reporting requirements, subjecting them to the same reporting requirements as other candidates. He anticipated that there may be some minor amendments as negotiations over the proposal continue.

In response to a question, Ms. Wardlow stated that PERS elections are not held on a specific date, but that there is a ballot period of about a month for voters to return their voting ballots. The filing schedule would have the candidates file a statement just before the beginning of the ballot period, and file another statement at the end of the year.

Mr. Krausse observed that the only change this proposal makes would be to subject candidates to a new filing deadline in the off year if they had any contributions or expenditures, treating them much like state candidates.

In response to a question about a proposed 4-year statute of limitations on collections actions, Enforcement Chief Steve Russo stated that staff needed more than a year for the statute of limitations to enforce a Commission order because of the way it approaches collecting fines. Staff tries to take the least onerous approach to collecting fines, working with the respondents to set up payment plans or some other method rather than going to court and obtaining a judgment right away. This system saves resources because staff does not have to file lawsuits, but does take more time.

Mr. Russo explained that staff often works with collection agencies that do not necessarily want to get a judgment in a case if they can work out a resolution with the debtor. If a person does not have resources, a judgment would be useless. However, the collection agency may find, later on, that the debtor has something that can be attached. At that point, a judgment may be obtained.

In response to a question, Mr. Russo stated that collection agencies are one of the methods staff uses to collect money so that attorneys and investigators are not spending their investigative time dealing with money collections.

Mr. Russo stated that a broader period of time for the statute of limitations gives them much more flexibility.

Chairman Randolph pointed out that staff has successfully argued, in court, that the FPPC has more than a 1-year statute of limitations, and that this proposal would clarify that.

Mr. Russo agreed, noting that the Superior Court ruled that the FPPC had a 4-year period to bring the collection action, and that the statute of limitations that generally applies to civil actions also applies to collection actions. This legislative proposal would codify that so that it would not have to be litigated again every time the issue arises.

Item #16. Legislative Report

Mr. Krausse pointed out that the two lobbyist bills were substantially amended, and that staff would present analyses on those at the March Commission meeting.

Mr. Krausse observed that FPPC bills are often consolidated by the Chairs of the elections Committees, and that SB 604 is a consolidated version of two Commission-sponsored bills. He noted that the bill was ready to go to the Governor, but that it was withdrawn and sent back to the Assembly to correct a technical problem addressing the *Levine* slate mail language. The amendment was made and Mr. Krausse expected the bill to move on to the Governor.

Item #17. Executive Director's Report

The Commission accepted the report as submitted.

Item #18. Litigation Report

The Commission accepted the report as submitted.

The meeting adjourned to closed session at 10:42 a.m.

The meeting reconvened in open session at 1:13 p.m.

Chairman Randolph announced that there was nothing to report from the closed session meeting.

Item #13. Bipartisan California Commission on Internet Political Practices

Henry Carter, member of the BCCIPP, and Matt Grossman, Research Director for the BCCIPP presented the final report of the commission.

Mr. Carter distributed the Commission Report. He outlined his background, explaining that he was a lawyer by profession, served as Chief Compliance Officer for E-trade, worked as a Senate Fellow, and had some experience with the internet having helped found a brokerage firm. He was asked to serve on the BCCIPP by Senator John Burton.

Mr. Carter stated that BCCIPP conducted hearings throughout the state of California in a bipartisan manner, looking for consensus. He served as co-chair of a technology committee, and held a hearing at Stanford University to try to get a sense of what is being used on the internet for political practices and to identify any corresponding issues.

Mr. Carter explained that Mr. Grossman drafted much of the report, which was designed to be a roadmap for best practices. It sets out the current practices used by politicians, campaigns, and advocacy groups, and identifies where the BCCIPP thinks the future lies. It also looks at issues that the FPPC should consider.

Mr. Carter stated that two issues, SPAM and privacy, were of particular interest to him. He explained that he receives political e-mails every day from candidates, and suggested that those types of e-mail should offer the addressee the means to have their name deleted from the addressor's e-mail list. He questioned how campaigns get internet addresses, and was concerned that privacy must be protected.

Mr. Carter also explained that the internet should be accessible to all Californians, but noted that the BCCIPP was unable to resolve that issue.

Mr. Carter stated that the internet was here to stay and was an incredible tool for dispensing information and raising awareness. He did not believe that it was changing people's minds yet, but believed campaigns could not be run without the internet. He suggested that the report will give the FPPC a sense of where things are as they consider regulations.

Mr. Grossman pointed out that all of the members of the BCCIPP would be available for any comments or questions from the Commission.

Mr. Grossman stated that he was a Phd. student at UC Berkeley and worked on these issues at the federal level when the FEC was dealing with them.

Mr. Grossman stated that the internet is changing the way people participate in the political process. He explained that many people used to place bumper stickers on their cars or signs in their yards to get involved in the political process. Now those people are forwarding campaign messages via e-mail, drafting candidates for governor and the presidency, or arranging meetings online with other supporters. He pointed out that the

internet is bringing more people into political involvement and campaign discourse who would not ordinarily be able to buy media advertising.

Mr. Grossman stated that the benefits of the additional public involvement in the political system outweighed any foreseeable costs of that activity. The BCCIPP suggested that the FPPC be patient in applying regulations to the new activities because those activities are constantly changing and any regulation that is made addressing internet links or e-mail will have tremendous repercussions for many online activities.

Mr. Grossman explained that the BCCIPP does not believe that the internet should automatically be a regulation-free zone. He noted that the internet could be equated, by default, with television advertising, or some other kind of public political advertising. He stated the BCCIPP made practical suggestions about how to accomplish their goals without opening loopholes for traditional political actors.

Mr. Grossman stated that the BCCIPP did not draft the details of regulations, but outlined goals, online activities that should remain free and not require registration, and ways to define the boundaries of those activities.

Mr. Grossman pointed out that a bipartisan group of people with many different opinions about the wisdom of campaign finance regulation concluded that internet political activity is promising for campaigns and should be allowed to flourish as much as possible. He noted that some of the BCCIPP members who supported regulations in other areas did not necessarily support regulating internet political practices.

Mr. Grossman stated that their recommendations followed a 2-year fact gathering process which explored summarizing other people's research regarding the types of activities that were occurring online. He explained that they found important trends on political websites, including peer-to-peer communications, where campaigns ask their supporters to use their social networks to send campaign messages to friends using the internet. Additionally, they found a connection between online and offline activity, where the web is used for organizing meetings. He stated that there is a tremendous amount of campaign activity occurring off of candidate websites, such as comparative engines, chat rooms and bulletin boards, and many parody and fan sites.

Mr. Grossman stated that the internet had low barriers to entry, so that people who might not be able to purchase advertising may now engage in some kind of online political activity. The BCCIPP noticed that there was an expansion of the amount of information available regarding campaigns and an increased number of sources where that information could be found. They also noticed that there were new conduits to information for voters in the form of search engines and Internet Service Providers, and those conduits could end up playing roles similar to those of the media.

Mr. Grossman stated that the BCCIPP explored the potential regulatory implications of the internet. They surveyed organizations similar to the FPPC in all 50 states, receiving

responses from over half of those states. Responses indicated that people did not see problems in straightforward applications of the law to internet activity. He noted that only one or two states thought that people might accidentally run afoul of regulations if they were interpreted to include regulation of websites and e-mail. Only a few indicated that they expected to encounter a lot of difficulty in applying regulations designed for other mediums to the internet.

Mr. Grossman stated that the BCCIPP obtained copies of any rulings or advisory opinions made at the federal level or in other states regarding these issues. They found, overall, that regulators created some problems when they did not foresee that a ruling in one area would affect other kinds of online political activities.

Mr. Grossman reported that BCCIPP believed that agencies should consider, in advance, how straightforward application of laws might affect emerging internet activities, while considering what kinds of activities should be allowed online as well as how to promote those kinds of activities. Mr. Grossman presented examples of those activities.

Mr. Grossman stated that the survey found coordination between official campaign committees and independent expenditure committees indicated that signing up for a campaign e-mail list, linking to a campaign website, or using campaign websites, would establish coordination between the independent expenditure committee and a political campaign committee, reportable as in-kind contributions.

Mr. Grossman discussed a number of BCCIPP recommendations made in their report, including: (1) a broad exemption for online voter activities; (2) creation of a "safe harbor" for candidates with regard to online activities of others; (3) allowing broad protection for "fan" sites that generally cost under $1,000 and may not abide by state disclaimer or registration requirements; (4) allowing search engines and hyperlinks to continue without FPPC regulation, and; (5) exempting some online media coverage from regulation, just as newspaper editorials are exempted.

In response to a question, Mr. Grossman stated that the issue of vote-swapping was brought up at their meetings, but there was no consensus from the BCCIPP on that issue.

Mr. Carter explained that the BCCIPP stayed away from issues involving voting because another commission was dealing with the online voting issues. He suggested that it could be a Securities Market issue.

Mr. Grossman noted that the BCCIPP was mandated to answer specific questions outlined in the report, and that they focused on answering those questions.

Mr. Carter added that the BCCIPP looked at issues not brought up by the Legislature, recommending that there should be further discussions of those issues.

Chairman Randolph asked for clarification of the BCCIPP's concern that the regulated community might be confused when the FPPC does not take a position in a certain area.

She noted the BCCIPP's example whereby a website might have candidate advertisements, but explained that the FPPC already had reporting exceptions for independent forums. She expressed concern that, if the Commission delineates everything that is permissible in the ever-changing medium, the Commission will have to work on that language every time a change is made in the medium.

Mr. Grossman stated that the BCCIPP recognized that the FPPC already had provisions for things like voter guides, and that they were merely suggesting that certain kinds of online activities be considered in that exemption. He explained why it was a bad idea to wait until a problem arose to address an issue, presenting an example of a fairly abusive practice that happened at the federal level, noting that a resulting enforcement action created a precedent establishing that links would be considered contributions. The BCCIPP believed that the end result outlawed activity that the BCCIPP thought should be promoted.

Mr. Carter added that there was a common belief that if the law did not mention "internet" the law did not apply to internet activity. He believed that as the law evolved, the internet should be considered another medium that may need to be specified in the law.

Commissioner Karlan asked how much of the BCCIPP's concerns were driven by the minimal costs of participation through the internet versus other mediums of communication. As an example, she stated that an advertisement on television, by a corporation, that urged people, at the end of the commercial, to check out the CEO's website would be considered a contribution. She questioned whether the zero costs of the internet communication drove some of the BCCIPP's recommendations.

In response to a question, Mr. Grossman stated that the low barriers to entry into the political discussion via the internet brought new people into the campaign that would not normally participate, and brings in a new issue other than just the cost. He questioned whether putting up a website in support of a politician would be given the same consideration as making commercials endorsing that politician, or whether it was more like standing on a soap box or going door-to-door.

Commissioner Karlan questioned whether it would be problematic to regulate campaigns that compensate search engines (like Google) for placing a sponsored campaign link in a position on the search engine's list, while at the same time not regulate web sites belonging to individuals who have links to the same campaign site, noting that linking to the campaign site from the individual's web site could cause the campaign site to be more prominent on the search engine list. She asked whether the BCCIPP was suggesting that the FPPC may need to be careful about exempting entities from internet campaign disclosure, while at the same time avoiding extending regulations to individuals.

Mr. Grossman agreed.

Mr. Carter observed that a well-known Northern California individual who has a popular website often expresses political views on that website, even though that individual is not normally active in politics. He noted that the person has a lot of power and influence through his website, but is able to skirt regulations. Mr. Carter believed that use of the internet for these purposes should be encouraged, but that it should also be balanced so that some internet usage is disclosed.

Chairman Randolph stated that the report was interesting and excellently done. She noted that two FPPC staff members, Jon Matthews and Sandy Johnson, also did a lot of work to help the BCCIPP, but that their work was not reflected in the acknowledgements.

Mr. Carter responded that members of the BCCIPP returned all funding for the BCCIPP to the state upon urging of Joe Remcho, and that the members of the BCCIPP dedicated the report in memory of Mr. Remcho.

Mr. Carter stated that FPPC staff did a great job helping the BCCIPP.

Mr. Grossman noted that he had acknowledged one FPPC staff member, and explained that he was not made aware of the other FPPC contributions.

Chairman Randolph adjourned the meeting at 1:50 p.m.

Dated: March 15, 2004.

Respectfully submitted,

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Sandra A. Johnson
Commission Assistant

Approved by:

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Chairman Randolph